UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

JOHN MICHAEL MAIER, AS TRUSTEE FOR THE DAHL'S EMPLOYEE STOCK OWNERSHIP PLAN AND TRUST,	
Plaintiff,	
v.	**Case No. 4:17-cv-51**
DAVID W. SINNWELL, ROSS L. NIXON, MARK BRASE, and RICHARD S. RISSMAN,	
Defendants.	

COMPLAINT AND JURY DEMAND

The Plaintiff, John Michael Maier, Professional Fiduciary Services, LLC, as trustee for the Dahl's Employee Stock Ownership Plan and Trust ("Maier"), pleads as follows:

Parties

1. The Plaintiff, Maier, is Trustee of the Dahl's Employee Stock Ownership Plan and Trust (the "Dahl's ESOP" or the "ESOP"), having been engaged as such by Foods, Inc. d/b/a Dahl's Foods on December 20, 2013. Maier is a fiduciary of the Dahl's ESOP and brings the claims as pled in this Complaint pursuant to 29 U.S.C. § 1132.

2. Defendant David W. Sinnwell was a fiduciary of the Dahl's ESOP as described herein.

3. Defendant Ross L. Nixon was a fiduciary of the Dahl's ESOP as described herein.

4. Defendant Mark Brase was a fiduciary of the Dahl's ESOP as described herein.

5. Defendant Richard S. Rissman was a fiduciary of the Dahl's ESOP as described herein.

Jurisdiction and Venue

6. The district court has jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e) because the claims as alleged herein arise under the laws of the United States, specifically under the Employee Retirement Income Security Act ("ERISA") which appears at 29 U.S.C. § 1001 *et seq.*

7. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because this is a civil action and a substantial part of the events or omissions giving rise to this claim occurred in this district.

8. All conditions precedent have been performed or have occurred.

Facts

Dahl's ESOP: Creation and Purpose

9. Beginning in 1975, Foods, Inc. d/b/a Dahl's Foods ("Dahl's") sponsored the Dahl's ESOP.

10. The Dahl's ESOP was controlled by a series of plan agreements. The most recent amended and restated agreement was executed on January 22, 2013.

11. The January 22, 2013 agreement stated that Dahl's Foods "desires to enable participating employees to share in the growth and prosperity of the company, to reward loyal service for the company, and to enable participating employees to accumulate capital for their future economic security." To this end, the purpose of the Dahl's ESOP was "to enable participants to acquire a proprietary interest in the company and, consequently, the [Dahl's ESOP] will invest primarily in stock of FOODS, Inc."

ESOP Fiduciaries: Advisory Committee, Trustee(s), and Plan Administrator(s)

12. The Dahl's ESOP required Dahl's to appoint an Advisory Committee, consisting of members which may or may not be members of the ESOP. The Advisory Committee was to "administer" the ESOP and had rights and duties including, but not limited, to:

a. Determining the eligibility of employees to participate in the ESOP;

b. Determining the value of a participant's accrued benefit, including the nonforfeitable percentage;

c. Construing and enforcing the terms of the ESOP;

d. Directing the Trustee with respect to crediting and distribution; and

e. Reviewing and rendering decisions respecting claims for benefits.

13. The Trustee of the Dahl's ESOP had rights and obligations including, but not limited to:

a. Being accountable to Dahl's for the funds contributed by Dahl's;

b. Having full investment discretion and authority with regard to the investment of the trust funds, except with respect to assets subject to direction of Dahl's or the Advisory Committee; and

c. Entering into an exempt loan transaction to acquire Dahl's securities or to repay an exempt loan.

14. The Plan Administrator had full responsibility for the ESOP's compliance with the reporting and disclosure rules of ERISA. In addition, in the absence of the existence of the Advisory Committee, the Plan Administrator was to assume the powers, duties, and responsibilities of the Advisory Committee.

The Trust Fund

15. The "Trust Fund" consisted of "all property of every kind held or acquired by the Trustee" under the Dahl's ESOP.

16. The Trustee was required to value the Trust Fund as of each accounting date to determine the fair market value of each participant's accrued benefit in the trust, as well as to value the Trust Fund at other times as directed by the Advisory Committee. Accounting dates generally occurred on the last day of each plan year.

17. The Trustee generally had full discretion as to the investment of the Trust Fund. It was to coordinate its investment policy with financial needs as communicated by the Advisory Committee.

18. The Trustee was authorized and empowered to invest the Trust Fund "primarily in Employer Securities… ." The Trustee was further authorized to retain as much of the Trust Fund in cash as it deemed advisable to satisfy the liquidity needs of the ESOP.

Employee Eligibility and Contributions

19. Employees generally became eligible to participate in the Dahl's ESOP upon completion of one year of service, so long as the employee was over 21 years of age. The ESOP was "frozen" in 2007 so that no new employees would become eligible unless the plan freeze was no longer in effect.

20. Under the terms of the ESOP, Dahl's was to generally make contributions to the ESOP from time to time in amounts which it deemed advisable. In addition, after 2011, Dahl's made annual Safe Harbor Contributions to the ESOP to satisfy the nondiscrimination requirements applicable to the 401(k) Plan. Contributions could be made in cash or employer securities.

21. Contributions were made both in cash and in employer securities at various times.

22. Employer contributions were generally allocated by the Advisory Committee to the accounts of each participating employee in the same ratio as each employee's compensation compared to the total compensation for all participating employees.

Maintenance and Valuation of Accounts

23. The Advisory Committee or Trustee (at the direction of the Advisory Committee) was to maintain an account in the name of each participant to reflect the participant's accrued benefit under the Dahl's ESOP. Each participant's accrued benefit consisted the participant's pro rata portion of the portion of the net worth of the total Trust Fund, based on the value of the participant's account compared to the total value of all participant accounts.

24. On each "valuation date," the Advisory Committee was to adjust participant accounts to reflect net income, gain, or loss since the last valuation date by allocating net income, gain, or loss on a pro rata basis to each account. The net income, gain, or loss consisted of the net income or loss including the change in fair market value of assets.

25. The Advisory Committee was to charge each account for all distributions made to the participant as well as for administrative expenses related to the account.

Distributions

26. Employees were generally entitled to distributions from the Dahl's ESOP upon separation from the company.

27. Distributions from the ESOP upon employees leaving the company were to be made as follows:

a. Except in the case of an employee's death, benefits in amounts less than $5,000 were to be distributed by the Trustee at the direction of the Advisory Committee as soon as administratively practicable after the employee's separation from Dahl's.

b. Except in the case of an employee's death, benefits in amounts greater than $5,000 were to be distributed by the Trustee at the direction of the Advisory Committee in a form and at a time consistent with the ESOP. The ESOP allowed an election by the employee of any distribution date.

28. Distributions over $5,000 were to be made by lump sum payment or by installment, at the choice of the employee.

ESOP Fiduciaries

29. The defendants, as members of the Advisory Committee, and/or Trustee(s) or Plan Administrator(s), were all "fiduciaries" of the Dahl's ESOP as that term is used under ERISA, 29 U.S.C. § 1001 *et seq.* Specifically, the defendants had discretionary control regarding management of the ESOP, exercised control over the ESOP regarding management and disposition of its assets, and had discretionary responsibility in administration of the ESOP.

30. During the time period from February 2011 through November 2014, the Advisory Committee of the Dahl's ESOP variously consisted of at least the following: David W. Sinnwell, Mark Brase and Richard S. Rissman.

31. Walter D. Blake was a member of the Dahl's ESOP Advisory Committee until his resignation from the company in 2010.

32. During the time period from February 2011 through December 2013, the Trustees of the Dahl's ESOP were as follows: Ross L. Nixon and David W. Sinnwell.

33. Ross L. Nixon resigned effective July 31, 2011.

Actions Taken by Fiduciaries

34. Between February 2011 and December 2013, the Dahl's ESOP, under the control of and at the direction of the defendants as its fiduciaries, made distributions to employees upon the employees' departure from Dahl's.

35. In general, upon the retirement or other termination of service of an employee, the fiduciaries would approve a cash distribution to the employee based upon the employee's ESOP account balance.

36. To make the cash distributions, the ESOP could either rely on its own liquidity or borrow money from Dahl's. At various times, the ESOP had liquidity as a result of 401(k) matching contributions from Dahl's.

37. If the ESOP lacked liquidity to make distributions, the ESOP then obtained loans from Dahl's in order to make distributions.

38. As the employees' ESOP accounts consisted of Dahl's stock, it was necessary upon making a cash distribution to place a cash value on the shares of Dahl's stock held by the ESOP.

39. The defendants, in their role as fiduciaries of the ESOP, hired outside firms to value Dahl's and Dahl's shares. Specifically, the following valuations were conducted.

a. A September 2010 valuation conducted by Marshall Stevens at the direction of the ESOP Trustees placed the value of Dahl's shares at $5.28 per share.

b. A September 2011 valuation conducted by Marshall Stevens at the direction of the ESOP Trustees placed the value of Dahl's shares at $5.13 per share.

c. A September 2012 valuation conducted by Prairie Capital Advisors at the direction of the ESOP Trustees placed the value of Dahl's shares at $4.21 per share.

d. A March 2013 valuation conducted by Prairie Capital Advisors at the direction of the ESOP Trustees placed the value of Dahl's shares at $4.20 per share.

40. The defendants caused the ESOP to make numerous distributions to former employees during the period from February 2011 through December 2013. Specifically:

a. From February 15, 2011 through April 14, 2011, the ESOP made a total of $1,581,210.48 of distributions to former employees. Distribution dates during this period were February 15, 2011, March 10, 2011, and April 5, 2011. These distributions were made using a price of $5.28 per share.

b. From April 15, 2011 through May 29, 2012, the ESOP made a total of $3,018.728.91 of distributions to former employees. Distribution dates during this period were April 29, 2011, May 25, 2011, June 29, 2011, July 29, 2011, August 29, 2011, September 23, 2011, February 17, 2012, and May 25, 2012. These distributions were made using a price of $5.13 per share.

c. From May 30, 2012 through December 26, 2012, the ESOP made a total of $574,748.61 of distributions to former employees. Distribution dates during this period were October 9, 2012. These distributions were made using a price of $4.21 per share.

d. From March 15, 2013 through September 26, 2013, the ESOP made a total of $2,640,305.26 of distributions to former employees. Distribution dates during this period were April 3, 2013 and June 14, 2013. These distributions were made using a price of $4.20 per share.

41. As a part of the above-described distributions, the defendants caused the ESOP to pay a total of $1,066,569.09 in distributions to Ross Nixon, Walter Blake, David Sinnwell, and

Richard Rissman. All of Nixon, Blake, Sinnwell, and Rissman were fiduciaries of the ESOP, as described herein.

42. By causing the ESOP to engage in the above-described transactions involving the purchase or sale of Dahl's stock, the defendants caused the Dahl's ESOP to engage in a series of prohibited transactions between the plan and a party in interest, in violation of 29 U.S.C. § 1106.

43. Further, by causing the ESOP to engage in the above-described transactions involving Nixon, Blake, Sinnwell, and Rissman, the defendants caused the Dahl's ESOP to engage in a series of prohibited transactions between the plan and a party in interest, in violation of 29 U.S.C. § 1106.

44. The only way the defendants could have caused the ESOP to engage in the above-described transactions without breaching their fiduciary duties to the ESOP would have been to ensure that the ESOP received adequate consideration or paid no more than adequate consideration in the transactions, under 29 U.S.C. § 1108. For the reasons as described herein, the defendants failed to do so.

45. Each of the stock valuations from at least 2010 through 2013 significantly overvalued the price of Dahl's shares. The valuations were based upon discounted cash flows including five years of projections. The defendants were responsible for projecting revenues and were responsible for making key assumptions which factored into the valuations.

46. Despite hiring outside firms to conduct valuations, it was improper and imprudent for the defendants to rely on those valuations, because the defendants knew that the underlying assumptions—over which the defendants had control—made the valuations fatally flawed. The factual assumptions underlying the valuations were not valid.

47. Therefore, the defendants failed to make a good faith effort to determine the fair market value of Dahl's stock associated with the ESOP's distributions from 2011-2013.

48. No prudent fiduciary would have authorized the ESOP to make distributions using the improper stock valuations. A prudent fiduciary who possessed the same knowledge as the defendants would have known that the assumptions underlying the valuations were flawed, and therefore the stock valuations were significantly overstated.

49. As a result of the stock valuations being overstated, the defendants, in their roles as fiduciaries of the ESOP, caused the ESOP to pay more than fair market value in purchasing Dahl's stock pursuant to the above-described distributions to former employees.

Maier Hired as Trustee

50. In late 2013, Dahl's made the decision to hire the plaintiff, Maier, as trustee of the ESOP to provide independent ESOP fiduciary services.

51. The Executive Committee of the Board of Directors of Dahl's met on December 20, 2013 to authorize the hiring of Maier as ESOP trustee, and to accept the resignations of defendants David Sinnwell and Mark Brase as ESOP trustees.

52. Maier was notified by the Dahl's board on February 13, 2014 of the board action authorizing his hiring.

53. After Maier's hiring, and at Maier's request, a valuation was undertaken in 2014 to value shares of Dahl's. This valuation was completed in May 2014 and placed the value of Dahl's shares at $0.55 per share.

First Cause of Action:
Violation of 29 U.S.C. § 1106

54. The plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1- 53 of this complaint.

55. The defendants are fiduciaries of the Dahl's ESOP under ERISA and are subject to the duties imposed by 29 U.S.C. § 1106.

56. By buying and selling employer securities as described herein, the defendants caused the Dahl's ESOP to engage in a transaction which constituted a direct or indirect sale or exchange of property between the plan and a party in interest, in violation of 29 U.S.C. § 1106.

57. By buying and selling employer securities as described herein, the defendants caused the Dahl's ESOP to engage in a transaction which constituted a transfer to a party in interest of assets of the plan, in violation of 29 U.S.C. § 1106.

58. The transactions in violation of 29 U.S.C. § 1106 were not for adequate consideration, as the stock price did not reflect a fair market value as of the dates of distributions.

59. Accordingly, the defendants engaged in prohibited self-dealing and conflicts of interest in violation of the fiduciary duties imposed by ERISA at 29 U.S.C. § 1106.

60. The Dahl's ESOP was damaged by the defendants' breach of their fiduciary duties in an amount equal to the total amount of overpayments which the defendants caused the ESOP to make.

61. The plaintiff brings this cause of action pursuant to 29 U.S.C. §§ 1109 and 1132 to restore to the Dahl's ESOP the losses resulting from the breaches described herein.

WHEREFORE, the plaintiff respectfully requests that the Court find that the defendants have breached their fiduciary duties under ERISA and award such relief as the Court finds necessary to redress the injury arising from the defendants' conduct, including but not limited to damages to the fullest extent allowed under ERISA, and attorney's fees.

Second Cause of Action:
Violation of 29 U.S.C. § 1106

62. The plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1- 61 of this complaint.

63. The defendants are fiduciaries under ERISA and are subject to the duties imposed by 29 U.S.C. § 1106.

64. By authorizing distributions to Nixon, Blake, Sinnwell, and Rissman, the defendants caused the Dahl's ESOP to engage in a transaction which constituted a direct or indirect sale or exchange of property between the plan and a party in interest, in violation of 29 U.S.C. § 1106.

65. By authorizing distributions to Nixon, Blake, Sinnwell, and Rissman, the defendants caused the Dahl's ESOP to engage in a transaction which constituted a transfer to a party in interest of assets of the plan, in violation of 29 U.S.C. § 1106.

66. The transactions in violation of 29 U.S.C. § 1106 were not for adequate for adequate consideration, as the stock price did not reflect a fair market value as of the dates of distributions.

67. Accordingly, the defendants engaged in prohibited self-dealing and conflicts of interest in violation of the fiduciary duties imposed by ERISA at 29 U.S.C. § 1106.

68. The Dahl's ESOP was damaged by the defendants' breach of their fiduciary duties in an amount equal to the total amount of overpayments which the defendants caused the ESOP to make.

69. The plaintiff brings this cause of action pursuant to 29 U.S.C. §§ 1109 and 1132 to restore to the Dahl's ESOP the losses resulting from the breaches described herein.

WHEREFORE, the plaintiff respectfully requests that the Court find that the defendants have breached their fiduciary duties under ERISA and award such relief as the Court finds necessary to redress the injury arising from the defendants' conduct, including but not limited to damages to the fullest extent allowed under ERISA, and attorney's fees.

Third Cause of Action:
Violation of 29 U.S.C. § 1104

70. The plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1- 69 of this complaint.

71. The defendants are fiduciaries under ERISA and are subject to the duties imposed by 29 U.S.C. § 1104.

72. By authorizing the distributions as described herein, the defendants failed to discharge their duties with respect to the Dahl's ESOP solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

73. Accordingly, the defendants breached their fiduciary duties imposed by ERISA at 29 U.S.C. § 1104.

74. The Dahl's ESOP was damaged by the defendants' breach of their fiduciary duties in an amount equal to the total amount of overpayments which the defendants caused the ESOP to make.

75. The plaintiff brings this cause of action pursuant to 29 U.S.C. §§ 1109 and 1132 to restore to the Dahl's ESOP the losses resulting from the breaches described herein.

WHEREFORE, the plaintiff respectfully requests that the Court find that the defendants have breached their fiduciary duties under ERISA and award such relief as the Court finds

necessary to redress the injury arising from the defendants' conduct, including but not limited to damages to the fullest extent allowed under ERISA, and attorney's fees.

Fourth Cause of Action:
Attorney Fees Pursuant to 29 U.S.C. § 1132

76. Plaintiff is entitled to recover "a reasonable attorney's fee and costs of the action" herein, pursuant to 29 U.S.C. Section 1132(g).

JURY DEMAND

77. Plaintiff requests that all issues be tried by a jury.

Dated: February 10, 2017.

/s/ Michael K. Thibodeau
Michael K. Thibodeau (IS9998288)

/s/ Gary R. Fischer
Gary R. Fischer
Simpson, Jensen, Abels,
Fischer & Bouslog, P.C.
400 Locust St. Ste. 400
Des Moines, IA 50309
Phone: 515.288-5000
Facsimile: 515.288.7718
E-mail: mthibodeau@iowafirm.com
gfischer@iowafirm.com
Local Co-Counsel for John Michael Maier,
As Trustee for the Dahl's Employee Stock
Ownership Plan and Trust

And

Jerome R. Kerkman
Gregory M. Schrieber
Kerkman & Dunn
757 N. Broadway, Suite 300
Milwaukee, WI 53202-3612
Phone: 414.277.8200
Facsimile: 414.277.0100
Email: jkerkman@kerkmandunn.com
gschrieber@kerkmandunn.com
(Pro hac vice application forthcoming)
Attorneys for John Michael Maier,
As Trustee for the Dahl's Employee Stock
Ownership Plan and Trust